

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: MS Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: January 9, 2009

Signature: 

(William A. Di Bianca)

17m DAC



Docket No.: SPINE 3.0-437 CIPCIPCIPCIPCIPCON III
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Errico et al.

Application No.: 10/784,598

Confirmation No.: 8307

Filed: October 12, 2004

Art Unit: 3738

For: INSTRUMENTATION FOR
REPOSITIONING AND EXTRACTING AN
ARTIFICIAL INTERVERTEBRAL DISC
FROM AN INTERVERTEBRAL SPACE

Examiner: B. E.
Pellegrino

PETITION UNDER 37 C.F.R. § 1.78(A)(3)
TO CORRECT PRIORITY INFORMATION

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Madam:

I. SUMMARY

This petition is submitted to correct the priority information in U.S. Patent Application 10/784,598 ("the '598 application"). In particular, the relationship information, in the original filing on October 12, 2004, for the applications from which benefit is claimed is believed to be incorrect as it did not specify the relationship to the prior applications and thus correction is sought. The petition fee set forth in 37 C.F.R. § 1.17(t) of \$1,400.00 is provided herewith.

Petitioner submits that the Domestic Priority Data as stated in the Filing Receipt (mailed August 10, 2004), in the

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Corrected Filing Receipt mailed November 10, 2004 and "Initial" Application Data Sheet filed on December 12, 2004 is incorrect. Petitioner requests that the Domestic Priority Data be revised as shown in the Application Data Sheet filed on September 2, 2008, in the Request for Corrected Filing Receipt filed on September 2, 2008 and in the revisions to the specification in an Amendment filed on September 2, 2008, and submits that any delay by Petitioner in submitting the correct priority data to the U.S. Patent & Trademark Office ("USPTO"), from the time the claim was due to the date the claim was filed, was unintentional.

II. FACTS

A statement of domestic priority data, on the first page of the specification of the '598 application, filed October 12, 2004, included a claim for priority under 35 U.S.C. §120 as a "continuation application of U.S. Patent Application Serial Number 10/282,356 (filed October 29, 2002) entitled "Instrumentation and Methods for use in Implanting an Artificial Intervertebral Disc", which is a continuing application of U.S. Patent Application Serial Number 10/256,160 (filed September 26, 2002) entitled "Artificial Intervertebral Disc Having Limited Rotation Using a Captured Ball and Socket Joint With a Solid Ball and Compression Locking Post", which is a continuing application of U.S. Patent Application Serial Number 10/175,417 (filed June 19, 2002) entitled "Artificial Intervertebral Disc Utilizing a Ball Joint Coupling", which is a continuing application of U.S. Patent Application Serial Number 10/151,280 (filed May 20, 2002) entitled "Tension Bearing Artificial Disc Providing a Centroid of Motion Centrally Located Within an Intervertebral Space", which is a continuing application of both U.S. Patent Application Serial Number 09/970,479 (filed October 4, 2001) entitled "Intervertebral Spacer Device Utilizing a

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Spirally Slotted Belleville Washer Having Radially Extending Grooves" as well as U.S. Patent Application Serial Number 10/140,153 (filed May 7, 2002) entitled "Artificial Intervertebral Disc Having a Flexible Wire Mesh Vertebral Body Contact Element", the former being a continuing application of U.S. Patent Application Serial Number 09/968,046 (filed October 1, 2001) entitled "Intervertebral Spacer Device Utilizing a Belleville Washer Having Radially Extending Grooves" and the latter being a continuing application of both U.S. Patent Application Serial Number 09/970,479 (detailed above) as well as U.S. Patent Application Serial Number 10/128,619 (filed April 23, 2002) entitled "Intervertebral Spacer Having a Flexible Wire Mesh Vertebral Body Contact Element", which is a continuing application of both U.S. Patent Application Serial Number 09/906,119 (filed July 16, 2001) and entitled "Trial Intervertebral Distraction Spacers" as well as U.S. Patent Application Serial Number 09/982,148 (filed October 18, 2001) and entitled "Intervertebral Spacer Device Having Arch Shaped Spring Elements". All of the above mentioned applications are hereby incorporated by reference herein in their respective entireties.". No Application Data Sheet was filed with the application.

Subsequent to the filing of the '598 application, the '598 application, along with all the related files, were transferred as just one part of a sizeable patent portfolio, to the law firm of Lerner, David, Littenberg, Krumholz and Mentlik, LLP ("Lerner, David"). A revocation and substitution of attorneys was executed by the assignee and filed on October 8, 2004.

After the transfer of files, the prosecuting attorney at Lerner David recognized that the domestic priority information in the '598 application was incorrect. The

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prosecuting attorney filed an "Initial" Application Data Sheet on December 2, 2004 which inadvertently omitted the domestic priority information.

Thereafter, the prosecuting attorney recognized that the domestic priority information was incorrect and inadvertently filed an Amendment, including amendments to the Cross-Reference paragraph of the specification, Request for Corrected Filing Receipt and Application Data Sheet on September 2, 2008 without this petition and related fee.

III. NATURE OF PETITION

Petitioner respectfully submits this petition in connection with the correction of domestic priority, asserting that the delay by Petitioner in submitting the correct priority data to the USPTO, from the time the claim was due and the date the claim was filed, was unintentional.

For the good cause shown, it is respectfully requested that the instant Petition be granted and the priority corrected as shown in the Application Data Sheet and amendments to the Cross-Reference to Related Applications paragraph of the specification included in the Amendment filed on September 2, 2008.

Petitioner notes that in similar petitions, the Application Data Sheet required a signature. As the Application Data Sheet filed on September 2, 2008 inadvertently omitted the signature, a Supplemental Application Data Sheet including a signature is submitted herewith.

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The Director is hereby authorized to charge our Deposit Account No. 12-1095 to cover the fee set forth in 37 C.F.R. § 1.17(t). If there are any additional charges in connection with this requested Petition, please charge Deposit Account No. 12-1095 therefor.

Dated: January 9, 2009

Respectfully submitted,

By 

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Registration No.: 58,653

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